NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

Paragon Systems, Inc. *and* Security, Police, and Fire Professionals of America (SPFPA), Local 3 *and* International Union, Security, Police, and Fire Professionals of America (SPFPA), and Its Local 3. Cases 21–CA–092902 and 21–CA–096930

February 21, 2014

#### **DECISION AND ORDER**

By Chairman Pearce and Members Miscimarra and Schiffer

The General Counsel seeks a default judgment in this case pursuant to the terms of a bilateral informal settlement agreement. Upon a charge filed on November 8, 2012, by Security, Police, and Fire Professionals of America (SPFPA), Local 3 (Local 3), and a charge filed on January 23, 2013, by International Union, Security, Police, and Fire Professionals of America (SPFPA) (the International Union), and its Local 3 (collectively, the Union), the General Counsel issued a complaint against Paragon Systems, Inc. (the Respondent) on March 28, 2013, alleging that it had violated Section 8(a)(5) and (1) of the Act. The Respondent filed an answer.

Subsequently, the Respondent and the Union entered into a bilateral informal settlement agreement, which was approved by the Regional Director for Region 21 on June 26, 2013. Among other things, the settlement agreement required the Respondent to: (1) provide the Union with information responsive to certain requests it made between July 15, 2012, and January 2, 2013; and (2) post and mail appropriate notices.

The settlement agreement also contained the following provision:

The Charged Party agrees that in case of noncompliance with any of the terms of this Settlement Agreement by the Charged Party, and after 14 days notice from the Regional Director of the National Labor Relations Board of such non-compliance without remedy by the Charged Party, the Regional Director will reissue the complaint previously issued on March 28, 2013 in the instant cases. Thereafter, the General Counsel may file a motion for default judgment with the Board on the allegations of the complaint. The Charged Party understands and agrees that the allegations of the aforementioned complaint will be deemed admitted and its Answer to such complaint will be considered withdrawn. The only issue that may be raised before the Board is whether the Charged Party defaulted on the terms of this Settlement Agreement. The Board may then, without necessity of trial or any other proceeding, find all allegations of the complaint to be true and make findings of fact and conclusions of law consistent with those allegations adverse to the Charged Party on all issues raised by the pleadings. The Board may then issue an order providing a full remedy for the violations found as is appropriate to remedy such violations. The parties further agree that a U.S. Court of Appeals Judgment may be entered enforcing the Board order ex parte, after service or attempted service upon Charged Party/Respondent at the last address provided to the General Counsel.

By letter dated November 5, 2013, the Regional Director for Region 21 notified the Respondent that it was in noncompliance with the terms of the settlement agreement. Specifically, the letter stated that the Respondent had failed to provide any of the information it had agreed to provide to the Union, and had failed to post, copy, and mail a notice to employees as agreed. The letter further stated that, absent full compliance with the settlement agreement by the close of business on November 19, 2013, the Regional Director would initiate default proceedings pursuant to the provisions of the settlement agreement. The Respondent failed to comply.

Accordingly, pursuant to the noncompliance provision of the settlement agreement, on December 6, 2013, the Regional Director reissued the complaint, and the General Counsel filed a Motion for Default Judgment with the Board. On December 11, 2013, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

### Ruling on Motion for Default Judgment

According to the uncontroverted allegations in the motion for default judgment, the Respondent has failed to comply with the terms of the settlement agreement by failing to furnish requested information to the Union, and failing to post and mail appropriate notices to employees. Consequently, pursuant to the noncompliance provision of the settlement agreement set forth above, we find that the Respondent's answer to the original complaint has been withdrawn and that all of the allegations in the reissued complaint are true. Accordingly, we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

<sup>&</sup>lt;sup>1</sup> See *U-Bee, Ltd.*, 315 NLRB 667 (1994).

## FINDINGS OF FACT I. JURISDICTION

At all material times, the Respondent, an Alabama corporation, with its principal office in Chantilly, Virginia, and facilities located in Covina and San Diego, California, has been engaged in the business of providing security services to agencies of the United States Government, including the Department of Homeland Security and the Federal Protective Services, in several counties in the State of California, including San Diego, Los Angeles, Riverside, San Bernardino, and Imperial Counties

During the 12-month period preceding reissuance of the complaint, a representative period, the Respondent, in conducting its operations described above, provided services valued in excess of \$50,000 at various State of California locations to the Department of Homeland Security and the Federal Protective Services, agencies of the United States Government that are directly involved in interstate commerce.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. We further find that the International Union and Local 3 are labor organizations within the meaning of Section 2(5) of the Act, and that Local 3 is an agent of the International Union for purposes of grievance processing.

#### II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and/or agents of the Respondent within the meaning of Section 2(13) of the Act:

Leslie Kaciban Jr. President

Roman Gumul Director of Labor Relations
Megan Bittenbender Vice President of Human

Resources

Micheale Campoy Human Resources
-McCarthy Manager

Dannie Sims Regional Program Manager Michael Persaud Assistant Program Manager

The following employees of the Respondent (Unit A) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

All armed and unarmed security officers employed by Respondent, performing guard duties as defined by Section 9(b)(3) of the Act pursuant to Contract HSCEW 9-08Q-00007 between Respondent and the United States Department of Homeland Security (DHS) for the provision of security services at certain federal facilities in the Los Angeles and surrounding areas, and excluding office clericals, managerial personnel, confidential personnel, supervisors (Lieutenants and Captains) as defined by the Act, and all other personnel

The following employees of the Respondent (Unit B) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time armed and unarmed security officers and lead security officers (Sergeants) performing guard duties as defined by Section 9(b)(3) of the Act employed by the Respondent in the counties of San Diego, San Bernardino, Riverside, and Imperial, California, pursuant to a contract between Respondent and the United States Department of Homeland Security, Federal Protective Services ("DHS/FPS") Contract GS-07F-0420N or its successor(s); excluding all other employees, temporary employees, office clericals, managerial personnel, confidential personnel, and supervisors as defined by the Act.

Pursuant to a certification of representative that issued on July 6, 2007, the Association of Contract Employees Security-Police and Detention Enforcement Ace/Spades was the designated exclusive collective-bargaining representative of Unit A, and was recognized as the representative by the Respondent and its predecessor U.S. Protect Corporation.

Since about March 14, 2009, the Association of Contract Employees Security-Police and Detention Enforcement Ace/Spades affiliated with the International Union, whereby the International Union became the designated exclusive collective-bargaining representative of Unit A, and was recognized as such by the Respondent. That recognition has been embodied in a collective-bargaining agreement effective by its terms from August 1, 2010, through September 30, 2013. At all times since at least March 14, 2009, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of Unit A.

Since about June 2, 2011, and at all material times, the Respondent has recognized the International Union as the exclusive collective-bargaining representative of Unit B. This recognition has been embodied in a recognition agreement dated August 31, 2011. At all times since about June 2, 2011, based on Section 9(a) of the Act, the

International Union has been the exclusive collectivebargaining representative of Unit B.

### A. Information Requests Relevant to Representation of Unit A

Since about the dates set forth below, Local 3 has requested, by electronic mail, that the Respondent furnish it with the following information:

- (1) July 15, 2012 and July 25, 2012:
  - (a) All Paragon Security Officers ("PSOs") that were not paid out for their personal and sick days from August 2010 through 2011;
  - (b) All PSOs that were not paid out for their personal and sick days from August 2011 through 2012.
- (2) July 31, 2012:
  - (a) Where does the CBA state that under Article 8, Section 5 employees do not get cash out for their personal and sick days?
  - (b) What has happened to employees' benefits of three (3) personal days and three (3) sick days for the last two (2) years?
  - (c) How does company track personal and sick days?
  - (d) Why has company management told employees that personal and sick days are in a use or lose category?
- (3) September 24, 2012 and October 4, 2012:
  - (a) All PSOs who were not able to take a personal day off due to lack of staff (Article 10.2 of the collective-bargaining agreement (CBA));
  - (b) Clarification of Article 8, Section 5 of the CBA on cash out or not cash out.
- (4) October 10, 2012:
  - (a) How is the company complying with Article 8. Section 5?
  - (b) Legal codes, statutes, decisions, and interpretations which were used by [Respondent] in making its determination on sick and personal days (Article 8, Section 5).
- (5) September 25, 2012 and October 21, 2012:
  - (a) All PSOs who were not paid for the personal days off;
  - (b) Clarification of Article 8, Section 5 of the parties' CBA regarding cashed out or not cashed out.
- (6) October 14, 2012 and October 26, 2012:
  - (a) Why was PSO Rodriguez' request for a personal day off denied?

- (b) How many rovers were available on October 5, 2012?
- (c) How many officers were scheduled personal day off on October 5, 2012?
- (d) How many officers were scheduled for vacation on October 5, 2012?
- (e) How many officers were scheduled for training on October 5, 2012?
- (f) How many officers were unable to report to work due to illness or on sick leave on October 5, 2012?
- (g) Copy of leave request forms of all employees granted leave for October 5, 2012;
- (h) Copy of leave request forms of all employees denied leave for October 5, 2012.
- (7) October 25, 2012 and November 7, 2012:
  - (a) All reports, documents, statements, e-mails, notes taken during phone calls, text messages between management and the Federal Government connected to this investigation;
  - (b) All correspondence, including text messages, e-mails, notes taken during phone calls between the company and management/supervisors connected to this investigation;
  - (c) Copy of all incidents similar to this investigation and the results for the last two years;
  - (d) A copy of all correspondence, including text messages, e-mail, and notes taken during phone calls between management and supervisors and Paragon Security Officers (PSOs) connected to this investigation.
- (8) October 27, 2012 and October 28, 2012:
  - (a) Why Mr. Escamirosa has not been made whole:
  - (b) Bargaining notes taken during contract negotiations;
  - (c) Internal memorandum regarding CBA Article 8, Section 5;
  - (d) Copies of all correspondence (letters, e-mails, and text messages) between management and supervisors dealing with compensation for personal days;
  - (e) Copies of all documentation, statements, e-mails, and notes taken during phone calls, text messages and facsimiles between the company and management and supervision.
- (9) November 12, 2012 and November 14, 2012:
  - (a) Mr. Hall's employee file, including counseling, write ups and disciplinary actions taken by the company against Mr. Hall;

- (b) All documents, e-mail, text messages, notes taken during phone calls, which led to Mr. Hall's suspension;
- (c) All documents, text messages, notes taken during phone calls which allow the company to continue Mr. Hall's suspension without pay.

The information requested by Local 3, as described above, is necessary for, and relevant to, the International Union's performance of its duties as the exclusive collective-bargaining representative of Unit A. Since about July 15, 2012, the Respondent has failed and refused to furnish this requested information to Local 3.

### B. Information Requests Relevant to Representation of Units A and B

Since about September 10, 2012, and including, but not limited to, September 18 and 19, October 10, 17, and 30, December 14 and 28, 2012, and January 2, 2013, the Union, orally and by electronic mail, has requested that the Respondent furnish it with the following information:

- (1) a complete listing of all health and welfare ("h&w") payments made on behalf of bargaining unit employee Robert Leal for the past 6 months;
- (2) a complete listing of the names of all employees employed in either Local 52 or Local 3 bargaining units that have taken Family Medical Leave under the Family Medical Leave Act (FMLA) within the last two (2) years and the dates of such leaves; and,
- (3) a list of the h&w payments made on behalf of the employees listed . . . above for a period of not less than 30 days before FMLA leave, during FMLA leave, and thirty days after FMLA leave.

The information requested by the International Union, as described above, is necessary for, and relevant to, the International Union's performance of its duties as the exclusive collective-bargaining representative of Units A and B. Since about September 10, 2012, the Respondent has failed and refused to furnish this requested information to the Union.

#### CONCLUSION OF LAW

By the conduct described above, the Respondent has been failing and refusing to bargain collectively with the exclusive collective-bargaining representative of its employees, in violation of Section 8(a)(5) and (1) of the Act. The unfair labor practices of the Respondent, described above, affect commerce within the meaning of Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) by failing and refusing to furnish the Union with certain information that is relevant and necessary to its role as the exclusive collective-bargaining representative of the employees in Units A and B, we shall order the Respondent to furnish the Union with the information requested on the dates noted above.<sup>2</sup>

#### ORDER

The National Labor Relations Board orders that the Respondent, Paragon Systems, Inc., Chantilly, Virginia, Covina and San Diego, California, its officers, agents, successors, and assigns, shall

- 1. Cease and desist from
- (a) Refusing to bargain collectively with Security, Police, and Fire Professionals of America (SPFPA), Local 3 and International Union, Security, Police, and Fire Professionals of America (SPFPA), and its Local 3 (the Union) by failing and refusing to furnish it with requested information that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of the Respondent's employees in the following appropriate bargaining units:

#### Unit A:

All armed and unarmed security officers employed by Respondent, performing guard duties as defined by Section 9(b)(3) of the Act pursuant to Contract HSCEW 9-08Q-00007 between Respondent and the United States Department of Homeland Security (DHS) for the provision of security services at certain federal facilities in the Los Angeles and surrounding areas, and excluding office clericals, managerial personnel, confidential personnel, supervisors (Lieutenants and Captains) as defined by the Act, and all other personnel.

<sup>&</sup>lt;sup>2</sup> In his motion for default judgment, the General Counsel requested that the Board find the Respondent in noncompliance with certain specific provisions of the settlement agreement, which required the Respondent to provide requested information to the Union, and to post and mail a notice to employees. Although the General Counsel's motion also included a catchall request for "a full remedy," it is not clear what remedies would be granted in a "full remedy" that are not already included in the settlement provisions. Accordingly, we construe the General Counsel's motion as a request to enforce the unmet provision-of-information and notice-related provisions of the settlement agreement, and we shall order those affirmative remedies.

Unit B:

All full-time and regular part-time armed and unarmed security officers and lead security officers (Sergeants) performing guard duties as defined by Section 9(b)(3) of the Act employed by the Respondent in the counties of San Diego, San Bernardino, Riverside, and Imperial, California, pursuant to a contract between Respondent and the United States Department of Homeland Security, Federal Protective Services ("DHS/FPS") Contract GS-07F-0420N or its successor(s); excluding all other employees, temporary employees, office clericals, managerial personnel, confidential personnel, and supervisors as defined by the Act.

- (b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.
- 2. Take the following affirmative action necessary to effectuate the policies of the Act.
- (a) Provide the Union with the information it requested in emails dated July 15, 2012, and July 25, 2012, regarding all Paragon Security Officers (PSOs) that were not paid out for personal and sick days from August 2010 through 2012.
- (b) Provide the Union with the information it requested in an email dated July 31, 2012, regarding Article 8, Section 5 of the collective-bargaining agreement (CBA) and personal and sick days.
- (c) Provide the Union with the information it requested in emails dated September 24, 2012, and October 4, 2012, regarding all PSOs who were not able to take a personal day off, and clarification of Article 8, Section 5 of the CBA.
- (d) Provide the Union with the information it requested in an email dated October 10, 2012, regarding compliance with Article 8, Section 5 of the CBA and legal codes, statutes, and decisions regarding Article 8, Section 5.
- (e) Provide the Union with the information it requested in emails dated September 25, 2012, and October 21, 2012, regarding PSOs who were not paid for personal days off and clarification of Article 8, Section 5 of the CBA.
- (f) Provide the Union with the information it requested in emails dated October 14, 2012, and October 26, 2012, regarding an employee's denial of a personal day off and the scheduling and leave of employees on October 5, 2012.

- (g) Provide the Union with the information it requested in emails dated October 27 and 28, 2012, regarding employees being made whole, bargaining notes, internal memoranda, correspondence and documentation pertaining to Article 8, Section 5 of the CBA and compensation for personal days.
- (h) To the extent the Respondent has not already done so, provide the Union with the information it requested in emails dated October 25, 2012, and November 7, 2012, regarding correspondence, documents, and similar incidents related to the suspension of an employee.
- (i) To the extent the Respondent has not already done so, provide the Union with the information it requested in emails dated November 12, 2012, and November 14, 2012, regarding an employee's personnel file, and correspondence leading up to that employee's suspension.
- (j) Provide the Union with the information it requested both orally and in emails dated September 18, 2012, September 19, 2012, October 10, 2012, October 17, 2012, October 30, 2012, December 14, 2012, December 28, 2012, and January 2, 2013, regarding health and welfare payments and FMLA leave.
- (k) Within 14 days after service by the Region, post at its facilities in Chantilly, Virginia, Covina and San Diego, California, copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 21, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.
- (1) Within 14 days after service by the Region, duplicate and mail, at its own expense, after being signed by the Respondent's authorized representative, copies of the attached notice marked "Appendix" to all current and former bargaining unit employees employed by the Respondent at any time since July 15, 2012.

<sup>&</sup>lt;sup>3</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(m) Within 21 days after service by the Region, file with the Regional Director for Region 21 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. February 21, 2014

Mark Gaston Pearce,	Chairman
Philip A. Miscimarra,	Member
Nancy Schiffer,	Member

# (SEAL) NATIONAL LABOR RELATIONS BOARD APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

#### FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT do anything to prevent you from exercising the above rights.

WE WILL NOT refuse to provide Security, Police, and Fire Professionals of America (SPFPA), Local 3 and International Union, Security, Police and Fire Professionals of America (SPFPA) and its Local 3 (Union) with information that is relevant and necessary to its role as your bargaining representative and to its ability to process your grievances.

WE WILL NOT in any like or related manner interfere with your rights under Section 7 of the Act.

WE WILL provide the Union with the information it requested in e-mails dated July 15, 2012, and July 25,

2012, regarding all Paragon Security Officers (herein PSOs) that were not paid out for personal and sick days from August 2010 through 2012.

WE WILL provide the Union with the information it requested in an e-mail dated July 31, 2012 regarding Article 8, Section 5 of the Collective Bargaining Agreement (herein CBA) and personal and sick days.

WE WILL provide the Union with the information it requested in e-mails dated September 24, 2012, and October 4, 2012, regarding all PSOs who were not able to take a personal day off, and clarification of Article 8, Section 5 of the CBA.

WE WILL provide the Union with the information it requested in an e-mail dated October 10, 2012, regarding compliance with Article 8, Section 5 of the CBA and legal codes, statutes, and decisions regarding Article 8, Section 5.

WE WILL provide the Union with the information it requested in e-mails dated September 25, 2012, and October 21, 2012, regarding PSOs who were not paid for personal days off and clarification of Article 8, Section 5 of the CBA.

WE WILL provide the Union with the information it requested in e-mails dated October 14, 2012, and October 26, 2012, regarding an employee's denial of a personal day off and the scheduling and leave of employees on October 5, 2012.

WE WILL provide the Union with the information it requested in e-mails dated October 27 and 28, 2012, regarding employees being made whole, bargaining notes, internal memoranda, correspondence and documentation pertaining to Article 8, Section 5 of the CBA and compensation for personal days.

WE WILL to the extent we have not already provided it, provide the Union with the information it requested in emails dated October 25, 2012, and November 7, 2012, regarding correspondence, documents and similar incidents related to the suspension of an employee.

WE WILL to the extent we have not already provided it, provide the Union with the information it requested in emails dated November 12, 2012, and November 14, 2012, regarding an employee's personnel file, correspondence leading up to that employee's suspension.

WE WILL provide the Union with the information it requested both orally and in e-mails dated September 18, 2012, September 19, 2012, October 10, 2012, October 17, 2012, October 30, 2012, December 14, 2012, December 28, 2012, and January 2, 2013, regarding health and welfare payments and FMLA leave.

PARAGON SYSTEMS, INC.